NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a filthy substance by reason of the presence of fly eggs and maggots.

DISPOSITION: July 22, 1953. The Francis C. Stokes Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond for the segregation and the destruction of the unfit portion, under the supervision of the Department of Health, Education, and Welfare. As a result of the segregation operations, 129 cases containing the 18-ounce cans of the product were found unfit and were destroyed.

20337. Adulteration of tomato paste. U. S. v. 9,996 Cases * * *. (F. D. C. No. 34910. Sample Nos. 18511–L, 18513–L.)

LIBEL FILED: March 23, 1953, District of New Jersey.

ALLEGED SHIPMENT: On or about February 16, 1953, by Hunt Foods, Inc., from Fullerton, Calif.

PRODUCT: 9,996 cases, each containing 96 6-ounce cans, of tomato paste at Newark, N. J.

LABEL, IN PART: (Can) "Hunt's Tomato Paste."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a decomposed substance.

DISPOSITION: April 20, 1953. Hunt Foods, Inc., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond for the segregation and the destruction of the unfit portion, under the supervision of the Department of Health, Education, and Welfare. 212 cans of the product were found unfit and were destroyed.

20338. Adulteration and misbranding of tomato puree. U. S. v. 12 Cases * * *. (F. D. C. No. 34924. Sample No. 73022–L.)

LIBEL FILED: April 16, 1953, Eastern District of Pennsylvania.

ALLEGED SHIPMENT: During or about September 1952, from the Hadad Canning Co., Aldine, N. J.

PRODUCT: 12 cases, each containing 24 1-pound, 12-ounce cans, of tomato puree at Philadelphia, Pa., in the possession of Max Factor.

RESULTS OF INVESTIGATION: The dealer removed the original labels from the article after its shipment in interstate commerce and applied the label described below. The firm named on the label had no connection with the article.

LABEL, IN PART: (Can) "Tomato Puree Dacotah * * * Andrew Kuehn Company Distributors Sioux Falls – South Dakota."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a decomposed substance by reason of the presence of decomposed tomato material, and of a filthy substance by reason of the presence of fly eggs and maggots. The article was adulterated when introduced into and while in interstate commerce.

Misbranding, Section 403 (e) (1), the article failed to bear a label containing the name and place of business of the manufacturer, packer, or distributor. The article was misbranded while held for sale after shipment in interstate commerce.

DISPOSITION: June 24, 1953. Default decree of condemnation and destruction.

NUTS AND NUT PRODUCTS

20339. Action for declaratory judgment and injunction. Stevens Industries, Inc. v. John P. Cowart, J. J. McManus, and Oscar Ross Ewing. Complaint dismissed.

COMPLAINT FILED: October 17, 1947, Middle District of Georgia, by Stevens Industries, Inc., plaintiff, against John P. Cowart, United States Attorney for the Middle District of Georgia, J. J. McManus, Chief of the Atlanta District of the Food and Drug Administration, and Oscar Ross Ewing, Administrator for the Federal Security Agency.

NATURE OF CHARGE: The complaint alleged that the plaintiff was engaged in the business of selling and shipping raw shelled peanuts in interstate commerce; that the plaintiff had sold 2 cars of raw shelled peanuts on October 7, 1947, which were to be shipped in interstate commerce to the buyer, who would process the peanuts into peanut butter and confectionery items; and that it was the plaintiff's intention to utilize sacks of nonuniform size and weight in making delivery of the peanuts, that the sacks were for convenience only in shipping the peanuts, that they did not represent the unit of sale, and that they would not be labeled.

It was alleged further that the Food and Drug Administration had ruled on July 24, 1939, that all peanuts sold in bulk but delivered in sacks for the convenience of the shipper did not require labeling; that on June 6, 1947, a new interpretation was issued to the effect that shelled peanuts in sacks, whether or not shipped in carload lots, should bear the following information required by the law as to food in package form, namely, the name of the product, an accurate statement of the net weight, and the name and place of business of the buyer or distributor; and that a ruling was made under date of July 15, 1947, by the then Acting Federal Security Administrator, that there could be no exemptions from the labeling provisions of the Act where peanuts were sold for the purpose of being processed into peanut butter or confectionery items.

PRAYER OF COMPLAINT: That the interpretation of June 6, 1947, and the ruling of July 15, 1947, be declared void and contrary to law, and that pending such judgment, the defendants be restrained from instituting any action against the plaintiff or its products under the provisions of the Federal Food, Drug, and Cosmetic Act, or under the interpretation and ruling complained of.

DISPOSITION: The matter came on for hearing before the court, and at its conclusion, the court entered the following order on December 15, 1947:

DAVIS, *District Judge:* "This case came on for a hearing before me on a motion to dismiss filed by defendants John P. Cowart, United States Attorney for the Middle District of Georgia, J. J. McManus, Chief, Atlanta Station of the Food and Drug Administration, and Oscar Ross Ewing, Administrator for the Federal Security Agency. The questions raised on said motion have been argued by briefs submitted by counsel for both the plaintiff and the defendants. Counsel for the plaintiff concedes that the Court has no jurisdiction over the person of Oscar Ross Ewing, Administrator for the Federal Security Agency, as the defendant is a non-resident of this district. After careful consideration of the complaint and the issues raised by said motion, the Court, on authority of *Janes* v. *Lake Wales Citrus Growers Association*, 110 F. (2d), 653 (5 C. C. A.) and *Helco Products Company* v. *McNutt*, 137 F.